

Exhibit 3

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16 Attorneys for
17 United States of America

18 UNITED STATES DISTRICT COURT

19 FOR THE CENTRAL DISTRICT OF CALIFORNIA

20 WESTERN DIVISION

21 IN THE MATTER OF THE SEIZURE OF) CASE NO. CV 15-389 ODW (VBKx)
22 ALL FUNDS ON DEPOSIT IN)
23 DEUTSCHE BANK SECURITIES, INC.,) GOVERNMENT'S NOTICE OF MOTION
24 ACCOUNT NUMBERS) AND MOTION TO DISMISS MOTION
25 REDACTED) FOR RETURN OF PROPERTY;
26 AND) MEMORANDUM OF POINTS AND
27 UP TO \$11,666,645.00 ON DEPOSIT) AUTHORITIES; DECLARATION OF
28 IN BANK OF AMERICA ACCOUNT) AUSA STEVEN R. WELK
29 NUMBER REDACTED , AND UP TO)
30 \$5,630,385.00 ON DEPOSIT IN)
31 BANK OF AMERICA ACCOUNT NUMBER)
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1 Street in Los Angeles, Respondent United States of America, by
2 and through its counsel of record, the United States Attorney's
3 Office for the Central District of California, will and hereby
4 does move to dismiss the Motion for Return of Property filed by
5 Movants Cindy Omidi, Asset Management Irrevocable Trusts via
6 Trustee Asiatrust Nevis Ltd, aka Asiatrust Ltd., and Property
7 Care Insurance, Inc. (collectively, "Movants") pursuant to
8 Federal Rule of Civil Procedure 12(b) (6) on the ground that the
9 Motion fails to state a claim upon which relief can be granted.
10 This motion is based upon the memorandum of points and
11 authorities, declaration and exhibits attached hereto, the
12 pleadings on file in this matter, and whatever additional
13 evidence and argument may be presented at the hearing on the
14 matter.

15 This motion is made following the conference of counsel
16 pursuant to Local Rule 7-3 which took place on and before
17 February 20, 2015.

18 DATED: March 13, 2015 STEPHANIE YONEKURA
19 Acting United States Attorney
20 ROBERT E. DUGDALE
21 Assistant United States Attorney
Chief, Criminal Division

22 /s/ Steven R. Welk
23 STEVEN R. WELK
24 Assistant United States Attorney
Chief, Asset Forfeiture Section

25 Attorneys for
26 United States of America

1 TABLE OF CONTENTS

	PAGE
3 TABLE OF AUTHORITIES.....	ii
4 I. INTRODUCTION.....	1
5 II. STATEMENT OF FACTS.....	2
6 III. ARGUMENT.....	4
7 A. Movants' Motion is Procedurally Improper.....	4
8 B. Section 983 is Procedurally and Factually 9 Inapplicable Here.....	5
10 C. The Instant Motion is A Motion for Return of 11 Property Under Federal Rule of Criminal Procedure 12 41(g) and Must Be Treated As a Civil Complaint.....	9
13 D. Movants Have Failed to State a Claim For Which 14 Relief Can Be Granted.....	10
15 E. Movants Are Not Entitled to the Return of the 16 Seized Assets.....	12
17 IV. CONCLUSION.....	14
18	
19	
20	
21	
22	
23	
24	
25	
26	
27	
28	

1 TABLE OF AUTHORITIES

2 FEDERAL CASES

3 PAGE

3 <u>Balistreri v. Pacifica Police Department,</u> 4 901 F.2d 696 (9th Cir. 1990)	10
5 <u>Bell Atlantic Corp. v. Twombly,</u> 6 550 U.S. 544 (2007)	11
7 <u>Campanelli v. Bockrath,</u> 8 100 F.3d 1476 (9th Cir. 1996)	11
9 <u>In re Daou Systems, Inc.,</u> 10 411 F.3d 1006 (9th Cir. 2005)	11
11 <u>DeSoto v. Yellow Freight System, Inc.,</u> 12 957 F.2d 655 (9th Cir. 1992)	11
13 <u>Gompper v. VISX, Inc.,</u> 14 298 F.3d 893 (9th Cir. 2002)	11
15 <u>In re Intermagnetics America, Inc.,</u> 16 101 B.R. 191 (C.D. Cal. 1989)	10
17 <u>Miranda v. Anchando,</u> 18 654 F.3d 911 (9th Cir. 2011)	7
19 <u>Mission Power Energy Co. v. Continental Casualty Co.,</u> 20 883 F. Supp. 488 (C.D. Cal. 1995)	10
21 <u>Pareto v. FDIC,</u> 22 139 F.3d 696 (9th Cir. 1998)	11
23 <u>Pieper v. United States,</u> 24 604 F.2d 1131 (8th Cir. 1979)	10
25 <u>United States v. \$8,850,</u> 26 461 U.S. 555 (1983)	9
27 <u>United States v. Ibrahim,</u> 28 522 F.3d 1003 (9th Cir. 2008)	9
29 <u>United States v. Ritchie,</u> 30 342 F.3d 903 (9th Cir. 2003)	9

1 **FEDERAL STATUTES AND RULES**

2	18 U.S.C. § 981(g)(1)	13
3	18 U.S.C. § 983.....	5, 9, 12
4	18 U.S.C. § 983(a).....	1, 4, 5
5	18 U.S.C. § 983(a)(1).....	5, 8, 11
6	18 U.S.C. § 983(a)(1)(A).....	6, 8, 11
7	18 U.S.C. § 983(a)(1)(A)(i).....	5, 7, 8
8	18 U.S.C. § 983(a)(1)(B).....	6
9	18 U.S.C. § 983(a)(1)(C).....	6
10	18 U.S.C. § 983(a)(1)(D)(v)	13
11	18 U.S.C. § 983(a)(1)(F)	passim
12	18 U.S.C. § 983(a)(2)	5
13	18 U.S.C. § 983(a)(3)	6
14	18 U.S.C. § 983(a)(3)(A)	8, 13
15	18 U.S.C. § 983(a)(3)(B)	9, 13
16	19 U.S.C. § 1607.....	7
17	19 U.S.C. § 1607(a)(1).....	7
18	19 U.S.C. § 1607(a)(4)	7
19	31 U.S.C. § 5312(a)(3)	7
20	Fed. R. Civ. P. 12(b)(6)	10
21	Fed. R. Crim. P. 41(g)	1, 5, 9, 10
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Movants Cindy Omidi ("Omidi"), Property Care Insurance, Inc. ("PCI"), and Asset Management Irrevocable Trusts via Trustee Asiatrust Nevis Ltd, aka Asiatrust Ltd ("the Trusts") (collectively, "Movants") have filed a motion, purportedly pursuant to 18 U.S.C. § 983(a), for the return of property seized pursuant to two federal seizure warrants ("Motion for Return"). The property at issue consists of monies and securities seized from several accounts held at Deutsche Bank Securities, Inc. ("Deutsche Bank") and Bank of America ("BofA"). For the reasons explained below, the Motion for Return must be dismissed because it is both procedurally insufficient and fails to state a claim upon which relief can be granted.

15 First, § 983(a) is not a basis for a motion for return of
16 property. The Motion for Return is in fact a motion for return
17 of property under Federal Rule of Criminal Procedure 41(g).
18 Where, as here, there is no pending criminal case involving the
19 property at issue, such a motion must be treated for all
20 purposes as a civil complaint for equitable relief. Under the
21 applicable standards, it must be dismissed because it fails to
22 state a claim upon which relief can be granted.

23 Substantively, Movants' claims fail because they are based
24 upon carefully-selected provisions of statutes that have no
25 application to the underlying facts. Movants' arguments are
26 based on a patently erroneous reading of the authority relied
27 upon and a gross misstatement of the facts. For example, they
28 argue that they are entitled to the immediate return of the

1 seized assets because the government failed to provide them with
2 notice of the seizure of the assets within sixty days. As
3 explained below, the 60-day notice requirement does not apply to
4 these seizures but - if it did - the undisputed evidence
5 establishes that the government did in fact give Movants notice
6 of the seizures well within the 60 days following the seizures.

7 As further explained below, the defects in the Movants'
8 moving papers cannot be remedied by amendment. The government
9 requests that the Motion to Return be dismissed without leave to
10 amend.

11 **II. STATEMENT OF FACTS**

12 On May 23, 2014, the Honorable Victor B. Kenton, United
13 States Magistrate Judge, issued a seizure warrant for all funds
14 on deposit in twelve accounts held at Deutsche Bank Securities,
15 Inc. ("Deutsche Bank"). See exhibit B to Motion for Return.
16 That warrant was executed on June 4, 2014, resulting in the
17 seizure of approximately \$92,000,000.00 in funds and securities
18 held in the targeted accounts.

19 On the day of the seizures, Assistant United States
20 Attorney Steven Welk received a telephone call from attorney
21 Charles Kreindler, who was inquiring about the seizures. AUSA
22 Welk responded to Mr. Kriendlar in an email at 11:18 am on June
23 4, 2014, advising that before he could provide Mr. Kriendlar
24 with any information concerning the seizures, Mr. Kriendlar
25 would have to confirm in writing that he represented the
26 accountholders for the seized accounts. See exhibit A to the
27 Welk Decl. Mr. Kriendlar replied in an email at 3:12 pm on June
28

1 4, 2014, indicating that he needed to "check on representation."
2 Welk Decl., exhibit B.

3 On June 5, 2014, at 1:33 pm, AUSA Welk received an email
4 from attorney Robert Klueger in which Klueger stated that he was
5 authorized to speak with AUSA Welk concerning the seized
6 accounts. Welk Decl., exhibit C. Attached to the email was a
7 letter from Mr. Klueger to AUSA Welk listing nine of the seized
8 accounts and advising that Mr. Klueger was representing Asia
9 Trust Ltd., the trustee/account holder for those accounts. Welk
10 Decl., exhibit D. At 5:19 pm on June 5, 2014, AUSA Welk
11 received an email from attorney Roger Diamond in which Diamond
12 advised that he was representing Property Care Insurance
13 ("PCI"), the accountholder of the remaining three accounts that
14 had been seized. Welk Decl., exhibit E.

15 On June 6, 2014 at 9:21 am, AUSA Welk sent an email to Mr.
16 Klueger with copies of the seizure warrant used to seize the
17 Deutsche Bank accounts and a further order obtained by the
18 government on June 3, 2014, addressing how Deutsche Bank should
19 process the seizure. Welk Decl., exhibit F. The copy of the
20 seizure warrant included the completed return, indicating that
21 the contents of the targeted accounts had been seized. Welk
22 Decl., exhibit G. On June 6, 2014 at 9:39 am, Mr. Klueger sent
23 an email to AUSA Welk authorizing the government to discuss with
24 Mr. Diamond all aspects of the seizure of the Asia Trust
25 accounts. Welk Decl., exhibit H. On June 6, 2014, at 10:23 am,
26 AUSA Welk sent Mr. Diamond an email attaching the seizure
27 warrant and further order. Welk Decl., exhibit I.

28

1 On June 24, 2014, Judge Kenton issued a seizure warrant for
2 funds held in two separate accounts at BofA in the name of PCI.
3 See exhibit C to Motion for Return. That warrant was executed
4 that same day, resulting in the seizure of an additional
5 \$17,297,000.00. On July 2, 2014, at 9:18 am, AUSA Welk sent an
6 email to Mr. Diamond advising him of the seizures and attaching
7 a copy of the seizure warrant. Welk Decl., exhibit J.

8 Several months later, on November 3, 2014 at 12:40 pm,
9 attorney James Spertus (counsel for Movants here) sent an email
10 to AUSA Welk asking about the "Omidi seizure," and purporting to
11 represent "the entities from whom the funds were seized." Welk
12 Decl., exhibit K. In a reply email, AUSA Welk asked for and
13 received confirmation from Mr. Spertus that he had been retained
14 by the accountholders, as AUSA Welk's most recent communications
15 had been with Mr. Diamond. Id. Mr. Spertus confirmed that he
16 and Mr. Umhofer had replaced Mr. Diamond as the attorneys for
17 the accountholders. Id. Since that time, government counsel
18 have had numerous conversations with Spertus and Unhoffer in
19 which the seized assets were discussed. There was also an in-
20 person meeting at the offices of the U.S. Attorney on November
21 14, 2014, attended by AUSA Welk and Mr. Umhoffer, during which
22 there was detailed discussion of the seized assets. Welk Decl.,
23 ¶13.

24 **III. ARGUMENT**

25 **A. Movants' Motion is Procedurally Improper**

26 Movants have titled their motion as one for "return of
27 property pursuant to 18 U.S.C. § 983(a)." See Notice of Motion
28 at 1, Memorandum at 1. They contend that the cited statute

1 requires the government to "give notice of the seizure to all
2 interested parties 'as soon as practicable, and in no case more
3 than 60 days after the date of the seizure.'" Motion at 1,
4 quoting 18 U.S.C. § 983(a)(1)(A)(i). They further contend that
5 where the government fails to provide such notice, "there is
6 only one remedy: the government must 'return the property' to
7 those from whom the property was seized." Id., quoting 18
8 U.S.C. § 983(a)(1)(F). Finally, Movants contend that "the
9 government has not only failed to give notice [of the seizures]
10 to Movants within 60 days of the seizure - it has failed to give
11 any notice as of the filing of this Motion, more than six months
12 later." Id.

13 Movants are wrong on the law and the facts. They begin by
14 attempting to disguise what is in fact a motion for return of
15 property under Federal Rule of Criminal Procedure 41(g) ("Rule
16 41") as a motion under § 983(a). Beyond that, their contentions
17 rest entirely upon their misplaced reliance upon carefully
18 parsed phrases of § 983 that apply only to administrative
19 forfeiture proceedings, which are unavailable here as a matter
20 of law. Finally, they conveniently omit indisputable facts that
21 demonstrate that even if their motion was procedurally sound, it
22 has no viable basis in fact.

23 **B. Section 983 is Procedurally and Factually Inapplicable
24 Here**

25 Section 983 is titled "General Rules for Civil Forfeiture
26 Proceedings." Subsection (a)(1) and (2), relied upon by Movants
27 here, sets out the general rules applicable to nonjudicial civil
28 forfeiture proceedings (also known as "administrative"

1 forfeiture proceedings).¹ Subsection (a)(3) sets out the general
2 rules applicable to the initiation of judicial civil forfeiture
3 proceedings that are triggered by the filing of a claim in
4 administrative forfeiture proceedings. Movants seek to rely
5 upon the provisions in subparagraph (a)(1)(A), governing
6 administrative forfeiture proceedings, which provide, in
7 pertinent part,

8 in any nonjudicial civil forfeiture proceeding under a
9 civil forfeiture statute, with respect to which the
10 Government is required to send written notice to interested
11 parties, such notice shall be sent in a manner to achieve
proper notice as soon as practicable, and in no case more
than 60 days after the date of the seizure.

12 Subparagraph (a)(1)(B) provides that a supervisory official in
13 the headquarters office of the seizing agency may extend for up
14 to 30 days the period for sending the notice required by
15 subparagraph (A) if certain specific conditions are present, and
16 subsection (a)(1)(C) provides that the Government may move the
17 court ex parte to extend that same notice period for up to 60
18 days at a time as long as any of the above-referenced specific
19 conditions are present. Subparagraph (a)(1)(F), also relied
20 upon by Movants (and also relating only to administrative
21 forfeiture proceedings), provides that

22 if the Government does not send notice of a seizure of
23 property in accordance with subparagraph (A) to the person
24 from whom the property was seized, and no extension of time

25 ¹ Nonjudicial or administrative forfeiture takes its name from
26 the fact that there is no judicial involvement whatsoever in the
27 process. The seizing agency initiates the process by sending
28 notice to all known interested parties of its intent to forfeit
the seized asset and, if no person comes forward to contest the
forfeiture, the property is forfeited to the government.

1 is granted, the Government shall return the property to
2 that person without prejudice to the right of the
3 Government to commence a forfeiture proceeding at a later
4 time.

5 The first step in determining the meaning and application
6 of a statute is to consider the words used in the statute
7 itself. See Miranda v. Anchando, 654 F.3d 911, 915-16 (9th Cir.
8 2011) ("The preeminent canon of statutory interpretation
9 requires us to presume that the legislature says in a statute
10 what it means and means in a statute what it says. Thus,
11 statutory interpretation begins with the statutory text.").

12 Section 983(a)(1)(A)(i) provides that the government is
13 required to give notice within 60 days of seizure "in any
14 nonjudicial civil forfeiture proceeding under a civil forfeiture
15 statute, with respect to which the government is required to
16 send written notice to interested parties." (Emphasis added).
17 Thus, it is plain from the language of the statute that the
18 provision applies only to nonjudicial forfeiture proceedings.
19 Administrative (i.e., nonjudicial) forfeiture proceedings are
20 governed by 19 U.S.C. § 1607, which does in fact require the
21 government to provide notice of such proceedings. However,
22 administrative forfeiture proceedings may only be initiated
23 against personal property valued at \$500,000.00 or less. 19
24 U.S.C. § 1607(a)(1). The seized assets here are worth far more
25 than that amount, making it legally impossible for the
26 government to have initiated administrative forfeiture
proceedings against them.²

27 ² Movants may argue that the seized funds and securities are
28 "monetary instruments" under § 1607(a)(4), but that provision
uses the definition of monetary instruments set out in 31 U.S.C.

1 Because the initiation of administrative forfeiture
2 proceedings was not even possible here, much less effected, the
3 notice provision of § 983(a)(1)(A)(i) has no application, as
4 there was no “nonjudicial civil forfeiture proceeding . . . with
5 respect to which the government [was] required to send written
6 notice to interested parties.” Since the notice provision was
7 inapplicable as a matter of law, the remedy for a purported
8 violation of that provision (§ 983(a)(1)(F)) is also
9 inapplicable.³

10 There is no basis for an argument that Congress, in
11 enacting the notice provision of § 983(a)(1)(A), intended it to
12 apply to anything other than administrative forfeiture
13 proceedings. It clearly understood that there was a difference
14 between administrative and judicial forfeiture proceedings.
15 Section 983 not only addresses them separately (as discussed
16 above), it includes separate provisions setting out, for
17 example, the procedure for how the deadlines applicable to each
18 may be extended (§ 983(a)(1) (administrative) and (3)(A)
19 (judicial)) and the remedies available in the event a
20

21 § 5312(a)(3). That definition includes coins and currency and
22 certain categories of bearer instruments, including stock
23 certificates for which title is passed on delivery. None of the
24 assets seized here are monetary instruments within the meaning
of that section.

25 ³ Again, this is demonstrated by the plain language of the
26 statute, which explicitly references the earlier notice
27 requirement. See § 983(a)(1)(F) (“If the government does not
28 send notice of a seizure of property in accordance with
subparagraph (A) . . . , the government shall return the property
without prejudice to the right of the government to commence a
forfeiture proceeding at a later time.” (Emphasis added)).

1 statutorily-imposed deadline is not met (§ 983 (a)(1)(F)
2 (administrative) and (3)(B) (judicial)).

3 Moreover, there is nothing in § 983 to suggest that the
4 statute was intended to give rise to an affirmative motion for
5 return of seized property. The proper procedural vehicle for
6 such a request is a motion under Federal Rule of Criminal
7 Procedure 41(g), which governs claims that a party is aggrieved
8 by an unlawful search or seizure or deprivation of his property.

9 **C. The Instant Motion is A Motion for Return of Property
10 Under Federal Rule of Criminal Procedure 41(g) and
11 Must Be Treated As a Civil Complaint**

12 While Rule 41(g), by its inclusion in the criminal rules,
13 contemplates the bringing of a motion in a pending criminal
14 case, it also may be invoked in situations where the return of
15 property is sought in the absence of a pending criminal action.
16 See United States v. \$8,850, 461 U.S. 555, 569-70 (1983)
17 (recognizing such motions under former Rule 41(e)). Here, the
18 Movants do not allege that they are defendants in any pending
19 criminal prosecution.

20 Under these circumstances, the Motion must be treated as a
21 civil complaint governed by the Federal Rules of Civil
22 Procedure. United States v. Ibrahim, 522 F.3d 1003, 1007 (9th
23 Cir. 2008); United States v. Ritchie, 342 F.3d 903, 906-07 (9th
24 Cir. 2003). The civil rules "apply to each stage of the
25 proceedings, the same way they would in a civil context."
26 Ibrahim, 522 F.3d at 1008. Rule 41(g) motions for return of
27 property are extraordinary devices because, if properly invoked,
28 they enable a movant to commence a district court action without

1 filing a formal complaint. Moreover, like ex parte
2 applications, they require the Court and the respondent to drop
3 everything else and address the motion on an accelerated basis.
4 See Mission Power Energy Co. v. Continental Casualty Co., 883 F.
5 Supp. 488, 491 (C.D. Cal. 1995) (ex parte applications require
6 court to "drop[] everything except other urgent matters"). The
7 district court's equity jurisdiction to entertain a motion for
8 the return of property is "extraordinary . . . [and] is to be
9 exercised with caution and restraint." Pieper v. United States,
10 604 F.2d 1131, 1133 (8th Cir. 1979). Thus, Rule 41(g) relief
11 should be granted only where it is clearly appropriate to do so.
12 In re Intermagnetics America, Inc., 101 B.R. 191, 193 (C.D. Cal.
13 1989) (litigants should not use ex parte applications to "cut in
14 line").

15 Because the Motion for Return must be treated as a civil
16 complaint for equitable relief, the government's response to
17 Movants' "complaint" by this motion to dismiss under Rule
18 12(b) (6) is appropriate.

19 **D. Movants Have Failed to State a Claim For Which Relief
20 Can Be Granted**

21 A motion to dismiss a complaint under Rule 12(b) (6) for
22 failure to state a claim upon which relief can be granted should
23 be granted where the complaint fails to assert a cognizable
24 legal theory or contains insufficient factual allegations to
25 support a cognizable legal theory. Balistreri v. Pacifica
26 Police Dept., 901 F.2d 696, 699 (9th Cir. 1990). While a court
27 determining a Rule 12(b) (6) motion must "accept the
28 [petitioner's] allegations as true and construe them in the

1 light most favorable to [petitioner]" (In re Daou Systems, Inc.,
2 411 F.3d 1006, 1013 (9th Cir. 2005)), conclusory allegations
3 alone are insufficient. Pareto v. FDIC, 139 F.3d 696, 699 (9th
4 Cir. 1998) (citing Campanelli v. Bockrath, 100 F.3d 1476, 1479
5 (9th Cir. 1996)); see also Gompper v. VISX, Inc., 298 F.3d 893,
6 896 (9th Cir. 2002) (reviewing the "totality of facts and
7 inferences" from the complaint). Dismissal is proper where the
8 complaint fails to give the defendant fair notice of a legally
9 cognizable claim and the grounds on which it rests. Bell Atl.
10 Corp. v. Twombly, 550 U.S. 544, 555 (2007). Leave to amend is
11 properly denied where it is clear that the deficiencies of the
12 complaint cannot be cured by amendment. DeSoto v. Yellow
13 Freight Sys., Inc., 957 F.2d 655, 658 (9th Cir. 1992).

14 Movants' claim here is that the government failed to give
15 them notice as required by § 983(a)(1)(A), triggering the
16 "remedy" of § 983(a)(1)(F). Their claims are foreclosed both
17 legally and factually. Legally, Movants' claims state no
18 cognizable legal theory -- the notice provision upon which they
19 depend does not apply to either of the seizures here because
20 they did not (and could not) result in the initiation of
21 administrative forfeiture proceedings.

22 Their claims are foreclosed factually because even if the
23 notice provision of § 983(a)(1) did apply to these seizures, the
24 government provided Movants with written notice of the seizures
25 either on the day they occurred or within a few days of their
26 occurrence. Government counsel confirmed the Deutsche Bank
27 seizures on the day they were made (Welk Decl., exhibit A), and
28 provided copies of the seizure warrant and further order

1 relating to the Deutsche Bank accounts two days later (Welk
2 Decl., exhibit F). Counsel for Movants were advised of the BofA
3 seizures approximately one week after the seizures were made.
4 See exhibit C to the Motion for Return and Welk Decl., exhibit
5 J. The "complaint" here is obviously deficient, and the defects
6 cannot be remedied by amendment. Dismissal without leave to
7 amend is therefore proper.

8 **E. Movants Are Not Entitled to the Return of the Seized
9 Assets**

10 Another critical aspect of the statutory forfeiture scheme
11 ignored by the Movants is the recognition by Congress in
12 enacting the scheme that seizures of property for forfeiture
13 often arise in the context of federal criminal investigations.
14 This case presents that scenario. The assets at issue were
15 seized based on the government's demonstration of probable cause
16 to believe that they represent or are traceable to a long-term
17 fraud scheme run by the account holders (or the beneficiaries of
18 the Trust Movants). There is currently ongoing litigation
19 before Magistrate Judge Kenton about whether the sealed
20 affidavits offered in support of the search and seizure warrants
21 in this matter should be unsealed. What is indisputable is that
22 the government investigation of the federal violations
23 underlying the seizure of the assets at issue is still ongoing.

24 As explained above, § 983 sets out specific deadlines for
25 the initiation of forfeiture proceedings following many seizures
26 of property.⁴ In addition, § 983 sometimes requires the

27 ⁴ As explained above, those deadlines apply only where the
28 government actually initiates administrative forfeiture
proceedings, which it was unable to do here as a matter of law.

1 government to return property when those deadlines, where
2 applicable, are not met. See § 983(a)(1)(F) and (3)(B).
3 However, those deadlines are not absolute, and may be extended
4 by a court upon agreement of the parties or at the government's
5 request under certain circumstances. The most common reason
6 that courts extend the forfeiture deadlines is because requiring
7 the government to move forward with formal forfeiture
8 proceedings would have an adverse effect on an ongoing criminal
9 investigation or prosecution. See § 983(a)(1)(D)(v) (extension
10 of administrative notice deadline allowed upon showing of
11 potential "adverse result," including "seriously jeopardizing an
12 investigation") and (a)(3)(A) (extension of deadline for filing
13 of civil forfeiture complaint allowed "for good cause shown").

14 There is also specific authority providing that judicial
15 forfeiture proceedings, once commenced, may be stayed by a court
16 pending the conclusion of an ongoing criminal investigation or
17 prosecution. § 981(g)(1) ("Upon the motion of the United
18 States, the court shall stay the civil forfeiture proceeding if
19 the court determines that civil discovery will adversely affect
20 the ability of the Government to conduct a related criminal
21 investigation or the prosecution of a related criminal case.")

22 This matter is still an ongoing criminal investigation.
23 Return of the seized funds is not justified by either the facts
24 or the law. Proceeding with a civil forfeiture complaint at
25 this time would obligate the government to make certain
26

27 Section 983 does not set out any deadlines for the commencement
28 of forfeiture proceedings where administrative forfeiture is
unavailable or not pursued.

1 disclosures that would jeopardize the ongoing investigation, and
2 would subject the government to discovery that would have an
3 obvious adverse effect. It is clear that the relief requested
4 by the Movants is simply not available to them.

IV. CONCLUSION

6 For all of the reasons stated above, the government
7 respectfully requests that this action be dismissed without
8 leave to amend for failure to state a claim upon which relief
9 can be granted.

10 DATED: March 13, 2015 STEPHANIE YONEKURA
11 Acting United States Attorney
12 ROBERT E. DUGDALE
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